In the High Court of Punjab and Haryana at Chandigarh

CWP No. 13422 of 2006
Date of decision: 25.8.2006

A.S.I. Ranvir Singh …Petitioner

Versus

State of Haryana and others …Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Vikas Chaudhary, Advocate,

for the petitioner.

JUDGMENT

M.M. KUMAR, J.

The question raised in the instant petition filed under Article 226 of the Constitution is whether the disciplinary proceedings initiated against the petitioner by respondent No. 2 are liable to be stayed during the pendency of criminal trial in case FIR No. 2, dated 5.1.2006, registered under Sections 7, 8, 9, 10, 12 and 13 of the Prevention of Corruption Act, 1988 read with Section 120-B IPC, Police Station Nissing (Karnal). The prayer made in the petition is for quashing order dated 4.4.2006 (P-5) dismissing the application of the petitioner by the Enquiry Officer, refusing to stay departmental proceedings initiated against him during the pendency of the aforementioned criminal case.

Brief facts of the case are that the petitioner has been working on the post of Assistant Sub Inspector in District Karnal

(Haryana). On 5.1.2006, a criminal case was registered against him by lodging FIR No. 2, dated 5.1.2006 (P-1). He was suspended from service vide order dated 10.1.2006 by the Superintendent of Police, Karnal (Respondent No. 2) and Deputy Superintendent of Police (Headquarters), Karnal (respondent No. 3) was appointed as Enquiry Officer to conduct a regular departmental inquiry. On 14.3.2006, the petitioner was issued a charge sheet by the department (P-3) and the same reads as under:-

> " That you, ASI Ranbir Singh, No. 440/Karnal when posted in Police Post, Bavana as the Incharge, then on 5.1.2006, you went to the Government accommodation of Inspector Isam Singh, then S.H.O., Police Station Nissing and you had demanded Rs. 85,000/- from Inspector Isam Singh for getting extension in his service tenure. Regarding this, you had taken Rs. 85,000/- from Inspector Isam Singh and after counting the same, wrapped up the notes in a newspaper and hold the same in your right hand and when you were about to leave the place, then Inspector Isam Singh stopped you by offering you water to drink and called his servant at that moment. Sh. Rakesh Duggal, HPS, Dy. Superintendent of Police (Flying Squad) of Director General of Police, Haryana, Panchkula and his associate staff had caught hold you and recovered the amount of bribe from you and Case FIR No. 2, dated 5.1.2006 under Section 7, 8, 9, 10, 12,

13 P.C. Act and 120-B IPC was got registered in Police Station Nissing and you were arrested alongwith the evidence.

So, you, ASI Ranbir Singh, No. 440/Karnal have committed a grievous negligence, misconduct and an act of indiscipline by leaving your place of posting without the prior approval of your senior officers and by accepting a bribe of Rs. 85,000/- from Inspector Isham Singh after going at his Government accommodation for getting his service tenure extended, despite the fact that you are a member of the disciplined force and having knowledge of law. So, a departmental inquiry is initiated against you vide order of Superintendent of Police, Karnal issued vide No. 1635-41, dated 10.01.2006."

On 31.3.2006, the petitioner moved an application before the Superintendent of Police, Karnal, in which he prayed for stay of the departmental proceedings till the conclusion of his trial in the criminal case (P-4). The Superintendent of Police referred the application to the Enquiry Officer, who has rejected the same on 4.4.2006 (P-5) by passing the following order:-

" The applicant A.S.I. Ranbir Singh has sought stay in holding Departmental Proceedings during the pendency of Criminal case against him. In my opinion, there is no bar in holding simultaneously Criminal proceedings and Departmental Proceedings as held in (i) 2002(3) RCR 773 (CAT) (II) 2004(1) RSJ 187 (iii) CWP

1575 of 1999 decided on 28.8.2001 by D.B. (Pb. & Hr. High Court and the Instructions issued by the Head Office vide Memo. No. 24144-24204/E(II)2, dated 26.10.04, regarding guidance for disposal of Departmental Enquiry."

The aforementioned facts un-equivocally shows that the petitioner is a member of the disciplinary force and has been charged with acceptance of illegal gratification of Rs. 85,000/- in a trap case. In the departmental proceedings, the charges are although emanating from the facts given in FIR yet they are entirely different. The criminal trial is yet to commence and the officer is yet to be charged by the criminal Court. The difference between the charges emanating from the charge sheet before the Enquiry Officer and the FIR before criminal trial is that in the former the petitioner has been charged for leaving the station without prior sanction of the superior officer and his indulgence in a misconduct. When such like charges are levelled in a departmental proceeding then it is not easy to conclude that the defence of the petitioner is likely to be prejudiced as he may have to disclose those facts which he may like to disclose before the criminal Court. It is evident that the Conduct Rules provides prior permission from a senior officer from leaving the place of posting, which could easily be proved without any prejudice to his right before the criminal court. Similarly, charge of misconduct can also be proved as it would not be required of him to disclose his defence. It is trite to observe that the standard of proof in both the proceedings in any case is entirely different.

The law on the aforementioned issue is also well settled, inasmuch as, it has been repeatedly held by Hon'ble the Supreme court that disciplinary proceedings should not be stayed as a matter of course. The prejudice to the defence of a delinquent officer before the criminal Court is only one factor which is laced with a number of other factors, namely, that the charges must be same and the case must involve complicated questions of law and facts. The aforementioned view has been taken by their Lordships' in para 14 and 15 of the judgment in the case of **State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417**, which reads as under:-

> " 14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been

hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. [(1960) 3 SCR 227 : AIR 1960 SC 806] and Tata Oil Mills [(1964) 7 SCR 555 : AIR 1965 SC 155] is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be – and should not be – delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held

over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. *The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements.* The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of

disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are leveled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him."

The aforementioned view has been approved in the cases of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679**; **Kendriya Vidyalaya Sangathan v. T. Srinivas, (2004) 7 SCC 442** and **State Bank of India v. R.B. Sharma, (2004) 7 SCC 27**. In Capt. M. Paul Anthony's case (supra) some of the factors which would govern the issue of staying the departmental proceedings during the pendency of a criminal case, have been summarized in para 22 and the same reads as follows:-

" 22. (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted

simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date,

so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

In the case of **Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry, (2005) 10 SCC 471**, their Lordships' noticed the aforementioned para 22 and opined that in cases involving Section 13 (1)(e) of the Prevention of Corruption Act, 1988, the charges of possessing wealth beyond the known sources of income of the accused would relate to the sources known to the authorities and not to the accused and, therefore, the accused would not require to disclose any of his defence in the departmental proceedings. The aforementioned principle emerges from perusal of para 13 and the same reads as under:-

" 13. It is to be noted that in cases involving Section 13(1)(e) of the PC Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression "known sources of income" is related to the sources known to the authorities and not the accused. The Explanation to Section 13(1) of the PC Act provides that for the purposes of the section, "known sources of income" means income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How the assets

> were acquired and from what source of income is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition. He has to satisfactorily account for the same. Additionally, issues covered by Charges 2 and 3 cannot be the subject-matter of adjudication in the criminal case."

When the facts of the present case are examined in the light of the principles laid down in Capt. M. Paul Anthony's case (supra) and other judgments noticed above, we cannot resist the conclusion that the instant petition lacks merit and is, thus, liable to be dismissed. There is no charge yet framed by the criminal Court which may constitute the basis for comparing the same with the charges the delinquent officer is facing in the departmental proceedings. The names of the witnesses are yet to surface in the criminal trial. We are further of the view that departmental proceedings against a member of disciplinary force like the Police, cannot be permitted to wait endlessly till the conclusion of criminal trial, which may take its own time because it would not be in the interest of Police Administration that a person like the petitioner, who is charged with serious misdemeanour should be continued in office indefinitely which the criminal proceedings are likely to consume. Staying the proceedings at this stage would only serve the interest of the accused. On the basis of the aforementioned factors it is not possible for us to accept the plea raised by the petitioner that the

departmental proceedings shall remain stayed till the conclusion of the criminal proceedings. Therefore, we do not find any merit in the instant petition.

For the reasons aforementioned, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

August 25, 2006

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